

REMARKS

Claims 15, 22-30, 34, 53, 60-68, 72 93-97, and 99-106 are pending in the present application. Claims 31-33 and 69-71 and 98 have been canceled without acquiescence and without prejudice. Claims 15, 22, 26, 53, 60, 64, 93 and 94 were amended, without prejudice and without acquiescence, in response to the Advisory Action, in order to more fully define the terms “region C” and “region E.” Support for these amendments can be found in Figure 4. Claims 26 and 64 were amended to change the status of the claims from dependent claims to independent claims. Claims 103-106 have been added. Support for these claims can be found throughout the specification, for example Figure 4. Applicants retain the right to file a continuation application on any canceled subject matter. No new matter has been added.

In the advisory action of April 14, 2004, the Examiner appears to indicate that the phrase “at least one of” may be new matter. Applicants remind the Examiner that there is no *in haec verba* requirement that the specification support the exact words on the claims. The requirement is that the claims be supported in the specification through express, implicit, or inherent disclosure. *See In re Oda* 443 F.2d 1200, 170 USPQ 268 (CCPA 1971). The scope of the entire specification teaches making at least one amino acid substitution within a protein sequence. More specifically, paragraphs [0163]-[0171] and Table 1 teach modifying a superantigen by various substitutions. Thus, based upon the disclosure, Applicants assert that one of skill in the art would be able to understand that the inventors had possession of the claimed invention.

The issues outstanding in this application are as follows:

- Claims 15, 22-34, 53 and 60-72 were rejected under 35 U.S.C. § 112, first paragraph as allegedly containing subject matter which was not described. This is overcome by the instant amendments.
- Claims 15, 22-34, 53 and 60-72 were rejected under 35 U.S.C. § 112, second paragraph as allegedly being indefinite. This is overcome by the instant amendments.

Applicants respectfully traverse the outstanding rejections, and Applicants respectfully request reconsideration and withdrawal thereof in light of the amendments and remarks contained herein.

I. 35 U.S.C. § 112, first paragraph

Claims 15, 22-34, 53 and 60-72 are rejected under 35 U.S.C. § 112, first paragraph as containing subject matter which was not described in the specification such a way as to enable one of skill in the art to which it pertains, or with it is most nearly connected, to make and/or use the invention. Applicants respectfully traverse.

In order to advance the prosecution of the present application, Applicants have amended independent claims 15, and 53 without acquiescence and without prejudice to indicate that the base starting point for variation is SEA/E-18, which is clearly acknowledged by the Examiner at the bottom of page 4 of the Office Action. Yet further, in order to advance prosecution, claims 31-33 and 69-71 have been canceled without acquiescence and without prejudice. In light of this amendment, Applicants assert that the present invention is described and enabled, thus the rejection is now moot, and Applicants request that the rejection be withdrawn.

II. 35 U.S.C. § 112, second paragraph

Claims 15, 22-34, 53 and 60-72 are rejected under 35 U.S.C. § 112, second paragraph as being indefinite. Applicants respectfully traverse.

In order to advance the prosecution of the present application, Applicants have amended independent claims 15, and 53 without acquiescence and without prejudice. In light of this amendment, Applicants assert that the amended claims are definite, and request that the rejection be withdrawn.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Application No.: 09/900,766

Docket No.: HO-P02188US0

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2375, under Order No. 10104199 from which the undersigned is authorized to draw.

Dated: September 27, 2004

Respectfully submitted,

By 

David L. Fox

Registration No.: 40,612

FULBRIGHT & JAWORSKI L.L.P.

1301 McKinney, Suite 5100

Houston, Texas 77010-3095

(713) 651-5151

(713) 651-5246 (Fax)

Attorney for Applicant